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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 28 1996

In the Matter of

**Streamlining the International
Section 214 Authorization Process
and Tariff Requirements --
Exclusion List**

) *Docket*
)
) **IB 95-118**
)
)
)

Federal Communications Commission
Office of Secretary

To: Chief, Telecommunications Division

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PETITION FOR RECONSIDERATION

OPTEL Communications, Inc. ("OPTEL"), by its attorneys and pursuant to Section 1.106 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.106, hereby submits its Petition for Reconsideration of the Order adopted in above-referenced proceeding.¹ By this Order, the Commission adopts an exclusion list which identifies restrictions on providing service using particular facilities or to particular countries for those carriers receiving global Section 214 authorizations. The exclusion list includes the CANUS-1 Cable System, which is licensed to OPTEL. OPTEL respectfully requests that the Commission reconsider its decision insofar as it includes CANUS-1 on the exclusion list.

On March 13, 1996, the Commission released a Report and Order adopting new procedures for the international Section 214 authorization process and tariff requirements.² The

¹ Streamlining the International Section 214 Authorization Process and Tariff Requirements -- Exclusion List, Order, IB Docket No. 95-118, DA 96-1205 (released July 29, 1996) (hereinafter, "Order").

² Streamlining the International Section 214 Authorization Process and Tariff Requirements, Report and Order, IB Docket No. 95-118, FCC 96-79 (released March 13, 1996) (hereinafter, "Report and Order").

procedures adopted therein, which became effective June 13, 1996, allow facilities-based carriers to obtain a global, rather than a country-specific, Section 214 authorization to provide international service to any country not on the exclusion list. As part of the new procedures, the Commission adopted the Order at issue here to establish and maintain an exclusion list identifying restrictions on providing service using particular facilities or to particular countries for those carriers receiving global Section 214 authorizations.

Prior to adopting the Order, the Commission issued a draft exclusion list and granted interested parties an opportunity to comment. OPTEL submitted Comments arguing that (1) placing CANUS-1 on the exclusion list is not necessary to protect against the diversion of U.S.-Europe traffic through Canada, (2) any concerns about the use of CANUS-1 by Teleglobe Canada, Inc. (“Teleglobe”)³ are already addressed in conditions placed on OPTEL’s cable landing license, and (3) the inclusion of CANUS-1 on the exclusion list is harmful to U.S. economic interests.

In the Order, the Commission appears to accept the arguments made by OPTEL in its Comments. The Commission acknowledges that inclusion of CANUS-1 on the exclusion list “may place the cable system at a competitive disadvantage and impose undue costs on carriers and the Commission.”⁴ The Commission states its concern, however, that removal of CANUS-1 from the exclusion list may be inconsistent with the provisions of a letter written by the U.S. Department of State in 1992 in connection with the grant of a cable landing license for CANUS-1. The Commission states that “[w]e therefore find it necessary to maintain the CANUS-1 cable

³ Teleglobe Canada, Inc. is a 20% shareholder of OPTEL.

⁴ Order at ¶ 6.

on the exclusion list for at least that period of time necessary to complete consultations with the State Department on this issue.”⁵ The Commission qualifies its holding by stating that it will either modify or affirm the Order within 30 days of the date of the Order based on the result of those consultations.

It is apparent from a reading of the Order that the Commission’s sole reason for retaining CANUS-1 on the exclusion list is because of the language contained in the 1992 letter from the Department of State. Indeed, the Commission expresses its willingness to remove CANUS-1 from the exclusion list by asserting its intention to engage in consultations with the State Department to resolve this issue. What is not explained is why the Commission could not have left CANUS-1 off of the exclusion list pending such consultation and then, in the unlikely event the State Department’s concerns so required, added CANUS-1 to the list. Publishing the list with CANUS-1 included imperils and needlessly stigmatizes CANUS-1 and its U.S.-based owner, OPTEL.

Thus, it was not only unnecessary to leave CANUS-1 on the exclusion list pending consultation with the State Department, but harmful to OPTEL and U.S. interests. The Commission can always amend its exclusion list at a later time if it determines that the existing safeguards discussed in OPTEL’s comments are insufficient to protect against discriminatory practices or other concerns of the State Department.

Moreover, given the concerns expressed in the State Department’s 1992 letter, and the conditions imposed by the Commission in OPTEL’s cable landing license, it is difficult to imagine why the State Department would wish to have CANUS-1 listed. The 1992 State

⁵ Id.

Department letter was written at a time when global section 214 authorizations were not even being contemplated by the Commission. In that letter, the State Department specifically refers to the use of CANUS-1 by Teleglobe. As explained in OPTEL's Comments, the use of CANUS-1 by Teleglobe is already strictly governed by conditions contained in OPTEL's cable landing license. Pursuant to those conditions, the State Department, as well as all other interested parties, will be given notice of, and opportunity to comment on, any proposed usage of CANUS-1 by Teleglobe. The language contained in the 1992 letter would seem to indicate that the State Department's concerns are the same as those addressed by the Commission in the cable landing licensing process, wherein the Commission concluded that it was not necessary to take measures beyond the conditions placed on OPTEL's license in order to protect against discriminatory practices.⁶

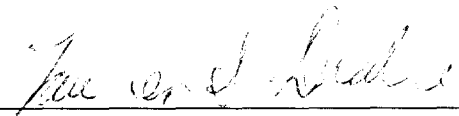
The Commission's placement of CANUS-1 on the exclusion list was unnecessary and prejudicial to OPTEL. The Commission expressly acknowledges the potential harm in its Order. Accordingly, the Commission should modify its Order and amend the exclusion list until such time as it is presented with evidence that the public interest is being adversely affected by the inclusion of CANUS-1 in the global Section 214 authorization process.

⁶ See OPTEL Communications, Inc., Order on Reconsideration, 11 FCC Rcd 1878 (1996).

WHEREFORE, FOR THE FOREGOING REASONS, OPTEL Communications, Inc.
respectfully requests that the Commission reconsider its action adopting the exclusion list insofar
as it includes CANUS-1.

Respectfully Submitted,

OPTEL COMMUNICATIONS, INC.

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August 28, 1996

CERTIFICATE OF SERVICE

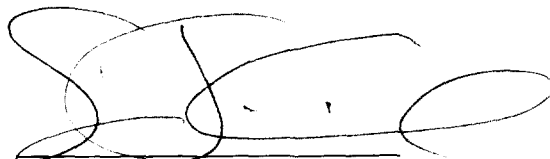
I, Sonia J. Arriola, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 28th day of August, 1996, caused to be sent by hand-delivery, a copy of the foregoing Petition for Reconsideration:

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A handwritten signature in black ink, appearing to read 'Sonia J. Arriola', written over a horizontal line.

Sonia J. Arriola